

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HUNT, MCCORKER <i>et. al</i>)	
)	No. 09 C 2071
Plaintiffs,)	
)	Judge Matthew F. Kennelly
v.)	
)	Magistrate Judge Ashman
DART, <i>et al.</i> ,)	
)	
Defendants.)	

**DEFENDANTS' JOINT MOTION TO DISMISS COUNT III
OF FOURTH AMENDED COMPLAINT, OR IN THE ALTERNATIVE,
TO BIFURCATE AND STAY DISCOVERY ON *MONELL***

Now come the Defendants, Thomas Dart, Michael Miller, Dr. Avery Hart, and the County of Cook, (hereinafter "County Defendants") by and through their attorneys, ANITA ALVAREZ, Maureen O. Hannon and Michael Jacobs, Assistant State's Attorneys, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, respectfully requests dismissal of Count III of the Plaintiffs' Fourth Amended Complaint, or in the alternative, to bifurcate and stay discovery on *Monell*. In support thereof, the County defendants state as follows:

1. Plaintiffs fail to state a claim under 42 U.S.C Section 1983 against these defendants in their official capacity under the theory of *Monell v. Department of Social Services*, 436 U.S. 658,690, 98 S.Ct 2018, 2036 (1978).
2. Plaintiffs' allegation of a single occurrence cannot, as a matter of law, establish the existence of a policy or custom and, therefore, fails to satisfy the requirements of *Monell. Cosby v. Ward*, 843 F.2d 967, 983 (7th Cir. 1988).
3. In the alternative, if this Court does not grant the Motion to Dismiss Count III of Plaintiffs' Fourth Amended Complaint, Defendants' respectfully request that this Court bifurcate Count III pursuant Federal Rule of Civil Procedure 42(b) and stay

discovery on *Monell* until the resolution of the federal claims against the individual Defendants.

4. Bifurcation is necessary to avoid prejudice to Defendants. *Houseman v. U.S. Aviation Underwriters*, 171 F.3d 1117, 1121 (7th Cir. 1999).
5. Incorporated and adopted herein by reference is the County Defendants' Memorandum of Law in Support filed this day.

WHEREFORE, Defendants, Thomas Dart, Michael Miller, Dr. Avery Hart, and the County of Cook, respectfully request that this Honorable Court dismiss Count III of the Fourth Amended Complaint against them, or in the alternative, to Bifurcate Count III and stay discovery on *Monell* pending resolution of the individual claims.

Respectfully submitted,
ANITA ALVAREZ
State's Attorney of Cook County
By: /s/ Maureen O. Hannon
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CERTIFICATE OF SERVICE

I, Maureen O. Hannon, Assistant State's Attorney, certify that I electronically filed the above **Motion to Dismiss Count III** to be served upon the individuals entitled to notice in this case via the CM/ECF system on June 23, 2010.

/s/ Maureen O. Hannon